Smith Ry. Co. v. *Chapman,* 39 Ark. 463, 43 Am. Rep. 280; *Swett* v. *Cutts,* 50 N. H. 439, 9 Am. Rep. 276. It has been suggested that any rule on this question should make a distinction between city and rural property. See article on SURFACE WATERS in 6 MICH. L. REV. 448.

WATERS—RIGHT TO REMOVE ICE.—In an action to enjoin defendant from taking ice formed on a mill-pond, it was *held* that the title to the ice is in the owner of the soil, and not in the owner of the right to flow the land for creating water power. *Valentino* v. *Schantz et al.* (N. Y. 1915), 109 N. E. 866.

It seems to be the well-established rule that the ice formed in waters where the bed is in private ownership is the property of the owner of the soil over which it is formed. *Washington Ice Co.* v. *Shortall,* 101 Ill. 46; *State* v. *Pottmeyer,* 33 Ind. 402; *Marsh* v. *McNider,* 88 Iowa 390. This rule has been based on the theory that the ice, by being attached to the soil, became part of the realty on the theory of accretion, *Washington Ice Co.* v. *Shortall,* supra, at p. 55, and also on the principle that the owner has the same rights in the ice as in the water, that is, "the right to take the ice from the water resting upon his land." *Stevens* v. *Kelley,* 78 Me. 445, 451. It would seem that different results would flow from these theories; the first giving title in the ice, the second giving the right to a reasonable use of the ice. Where riparian owners or their predecessors in title have granted the right to flow their land by means of a dam to raise a head of water for propelling machinery, the owner of the right of flowage does not, by the prevailing rule, acquire any right to the ice which may form on the pond over the land of the riparian owners. *Julien* v. *Woodsmall,* 82 Ind. 568; *Bigelow* v. *Shaw,* 65 Mich. 341. The owner of the land flowed may use the ice adjoining his land to any extent which does not decrease the flow of water below that necessary to successfully fulfill the needs of the owner of the dam. *Eidemiller Ice Co.* v. *Guthrie,* 42 Neb. 238; *Reyson* v. *Roate,* 92 Wis. 543; *Stevens* v. *Kelley,* supra; *Searle* v. *Gardner,* 10 Sadler (Pa.) 163; *Beachwood Ice Co.* v. *American Ice Co.,* 176 Fed. 435; *Paine* v. *Woods,* 108 Mass. 160, 173; *Abbott* v. *Cremer,* 118 Wis. 377; *Cummings* v. *Barrett,* 10 Cush. 186, (semble). This rule rests on the theory that the owner of the servient estate can make any use of it not inconsistent with the easement of flowage. *Brookville & Metamora Hydraulic Co.* v. *Butler,* 91 Ind. 134, 138. The courts of New York and Connecticut formerly took the view that the owner of the mill privileges had a right to all the ice formed on the pond. *Myer* v. *Whitaker,* 5 Abb. N. C. (N. Y.) 172; *Mill River Woolen Mfg. Co.* v. *Smith,* 34 Conn. 462. These cases, however, have been questioned; *Dodge* v. *Berry,* 26 Hun (N. Y.) 246; *Howe* v. *Andrews,* 62 Conn. 398. It would seem that the principal case, being from the Court of Appeals, clearly sets forth the New York doctrine on this question, and adopts the rule which is at present universally accepted in this country.

WILLS—EFFECT OF PARTIAL CANCELLATION ON THE RESIDUE OF ESTATE.—Where the sixth paragraph and part of the tenth paragraph (the latter being the residuary clause) had been cut and removed from the will of the testa-

trix with intent of revoking such parts, it was found by the surrogate that the sixth paragraph contained two legacies of $2,500 each to X and Y, and that the missing part of the tenth clause gave each of the above one-fourth of the residue of the estate. He admitted the will to probate, including the missing clauses as he found their contents to be. His findings of fact were reversed on account of admission of hearsay evidence and as to the question of law the Supreme Court of New York *held* that in case the contents of the missing clauses could not be proved, the two legacies in the sixth paragraph should sink into the residue of the estate and the two one-fourth shares of the residue should become intestate property. *In re Ursula Kent* 155 N. Y. Supp. 894.

In England by the Statute of Frauds and the Statute of Wills, a clause of a will may be revoked by cancellation. The same is true in some of our states, *In re Brown's Will,* 40 Ky. 56; *In re Tomlinson's Estate,* 133 Pa. St. 245. But in New York and in other jurisdictions, according to the interpretation of their statutes, an obliteration is ineffectual to revoke such clauses. *Lovell* v. *Quetman,* 88 N. Y. 377; *Griffin* v. *Brooks,* 48 Oh. St. 211; *Law* v. *Law,* 83 Ala. 432. In the states which follow the New York rule, the question in the principal case can only arise, therefore, in those cases where it is impossible to prove the contents of the obliterated clauses. At common law lapsed devises did not fall into the residue but lapsed legacies did. *Crerar* v. *Williams,* 145 Ill. 625, 34 N. E. 467. Under our Statutes allowing after-acquired real estate to be devised, lapsed devises fall into the residue. *Upham's Estate,* 127 Cal. 90, 59 Pac. 315; *Holbrook* v. *McCreary,* 79 Ind. 167; *Cruickshank* v. *Home for Friendless,* 113 N. Y. 337, 21 N. E. 64, 4 L. R. A. 140. But at common law failure of part of the residue, as to that part became intestate property. *In re Hoffman,* 201 N. Y. 247; *Ward* v. *Dodd,* 41 N. J. Eq. 414; *Wahn's Estate,* 156 Pa. St. 194; *Worcester Trust Co.* v. *Turner,* 210 Mass. 215. It would seem that this rule would also apply to cases where the clause was revoked by cancellation. This was the reasoning followed in the principal case. However, the court was confronted with a recent case in its own jurisdiction, *Osburn* v. *Rochester Trust and Safe Deposit Co.,* 209 N. Y. 54, where the court held that the cancellation of a codicil (inconsistent with the will) did not restore the will to its original form but that the testatrix in that case died intestate as to the property referred to in the codicil. In other words, the lapsed legacy did not fall into the residuary clause but became intestate property. The court attempts to distinguish these two cases and at least decides that the holdin in the *Osburn* case does not control the decision in this case, for if the legacies failed for lack of proof of their contents here, they were held as a matter of law to fall into the natural "catch-all," the residuary clause.

WORKMEN'S COMPENSATION ACT—DELEGATION OF JUDICIAL POWERS TO ADMINISTRATIVE BOARD.—In an action to recover damages from defendant under the common law for personal injuries sustained while in its employ, plaintiff contended, among other reasons, that the Workmen's Compensation Act of 1912 was unconstitutional because the powers conferred and duties imposed